

**DECISION**

17572 Westfall  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-198177

DATE: March 31, 1981

MATTER OF: Sher J. Rana - Lump-Sum Payment for  
104 Hours of Forfeited Annual Leave

DIGEST: Separated Agency for International Development employee who forfeited 104 hours of annual leave allegedly due to an exigency of the public business is not entitled to lump-sum payment for the forfeited hours on the present record, since the appropriate agency official has not made the requisite exigency determinations. If such determinations are made, this Office would have no objection to payment.

Mr. Sher J. Rana appeals from a decision by our Claims Division which denied him a lump-sum payment for 104 hours of forfeited annual leave. Because the appropriate agency official has not determined that Mr. Rana forfeited his leave due to an exigency of the public business, and we will not reverse an agency determination in the absence of a showing that it was arbitrary, capricious, or clearly erroneous, we deny Mr. Rana's appeal on the present record.

On September 9, 1976, Mr. Rana, an employee of the Agency for International Development, submitted a written request for 160 hours of annual leave to be taken between November 1 and November 26, 1976. On the same day, Mr. Rana requested permission to schedule 152 hours of restored annual leave for the period between December 3 and December 30, 1976. On September 10, 1976, Mr. Rana's applications were approved. Shortly before he was due to depart on the November leave, however, Mr. Rana was assigned to begin work as the U.S. Budget Advisor to the Minister of Finance, Government of Bahrain. Since this temporary duty assignment began on October 11, 1976, and did not terminate until November 12, 1976, the leave which Mr. Rana had scheduled for the period between November 1 and November 12, 1976 had to be cancelled. Mr. Rana continued to report for work throughout the month of November. Between December 3 and December 30, 1976, he used his restored annual leave as scheduled.

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On January 17, 1977, Mr. Rana requested that the 160 hours of leave which he had forfeited during November 1976 due to "exigencies of the public business" be restored. On February 17, 1977, his request was approved by E.N.S. Girard II, Assistant Administrator, Latin American Bureau. Upon review, however, AID's Employee Services Division reversed the AA's decision and disallowed Mr. Rana's claim. The ESD determined that Mr. Rana had chosen to forfeit the leave which he had accrued during the year 1976 in order to preclude the loss of his restored leave, and that since an AID regulation specifically stated that "loss of regular leave due to use of restored leave" did not constitute a proper basis for restoration of leave, his request did not merit approval. (AID Handbook 27, Para. 3B6c.) AID's Office of Personnel concurred in the denial of restoration.

Mr. Rana separated from the Agency for International Development in February of 1978. In October 1978, he submitted a claim to the General Accounting Office's Transportation and Claims Division, requesting restoration of the 160 hours of forfeited annual leave. The Claims Division concluded that only 152 hours had been scheduled and could be considered for restoration, since November 25, 1976 was a legal holiday. In a Certificate of Settlement dated November 27, 1979, the Claims Division allowed Mr. Rana a lump-sum payment for 48 hours of forfeited leave, but denied him payment for the additional 104 hours on the following grounds:

"\* \* \* [I]t appears that you had ample time to use this leave before the end of the leave year to avoid forfeiture. The record show [sic] that you returned from temporary duty on November 12, 1976, and since there was no indication in the file that an exigency of the public business was in existence during the period November 15,

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1976, to December 2, 1976, you could have used the 104 hours of annual leave during this period to avoid forfeiture."

Mr. Rana appealed this determination to our Office on February 25, 1980. He argues that the leave should be restored to him since an exigency of the public business which was not documented in the record prevented him from rescheduling leave on the days in question.

Though it is not explicitly stated in the record, it can be inferred from the documentary evidence presented that Mr. Rana carried forward into the year 1976 the maximum number of hours which 5 U.S.C. § 6304 permits an employee to accumulate for use in succeeding years. Accordingly, the issue for our determination is whether or not Mr. Rana is entitled to restoration of his forfeited leave under 5 U.S.C. § 6304(d)(1)(B).

Section 6304(d)(1)(B) of title V, United States Code, provides that:

"Annual leave which is lost by operation of this section because of exigencies of the public business when the annual leave was scheduled in advance shall be restored to the employee."

Two requirements must be satisfied before annual leave will be restored under this subsection. First, the exigency or operational demand must have been of such importance as to preclude the use of scheduled annual leave. Attachment to FPM Letter No. 630-22, § 5a(2)(a). Management is permitted to exercise its discretion in determining when an exigency of sufficient importance exists, but only a limited number of officials have the authority to make such determination:

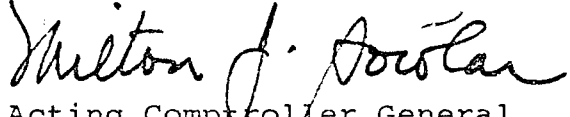
"Before annual leave may be restored under section 6304 of title 5, United States Code, the determination that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated by him to act for him on this matter. The designated official may not be more than two organizational levels below the head of the agency at the central headquarters level, or more than one organizational level below the head of a major field headquarters or major field installation. Except where made by the head of the agency, the determination may not be made by any official in the immediate organizational unit affected by the exigency or by any official whose leave would be affected by the decision." 5 C.F.R. § 630.305.

Secondly, the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. 5 C.F.R. § 630.308; Attachment to FPM Letter 630-22, § 5c(2).

In Mr. Rana's case, [the second of these requirements was satisfied. The first was not, however, and therefore we must deny his appeal on the present record. At the time in question, the agency head had delegated to AID's Director of Personnel the authority to determine that an exigency of the public business was of such major importance that employees could not use scheduled annual leave to avoid forfeiture, and the authority to approve the restoration of annual leave forfeited because of such exigency. AID Handbook 27, Appendix E (Foreign Affairs Manual Circular No. 673, April 17, 1974, Para. 4). AID regulations also provided that an employee should forward a request for approval of restoration of annual leave through his executive or

administrative officer to the appropriate headquarters office for action by the decision officer. AID Handbook, Appendix E (FAMC No. 673, Para. 8(a)). Accordingly, the approval of Mr. Rana's request for restoration by E.N.S. Girard II, Assistant Administrator, Latin American Bureau was not an authoritative agency determination. Mr. Girard had only the authority to forward Mr. Rana's application. The officer with the authority to approve the restoration of annual leave, the Director of Personnel, determined that Mr. Rana was not entitled to have his leave reinstated.

We point out, however, that the record indicates that the administrative denial of the claim was based on AID's regulation concerning the loss of leave resulting from the use of restored leave. The scheduled use of 104 hours of the leave in this case was for a period immediately prior to that in which the restored leave was used. Accordingly, AID may wish to reconsider his leave restoration request on the basis of a determination being made that the loss of 104 hours of leave was due to an exigency of the public business. If AID so determines, our Office would have no objection to payment of the claim for such leave.

  
Acting Comptroller General  
of the United States